

**AGREEMENT AND RELEASE BETWEEN THE CITY OF RAPID CITY  
AND DON BUNKER AND JODIE BUNKER**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota (“City”), and DON AND JODIE BUNKER, of 1905 38<sup>th</sup> Street, Rapid City, South Dakota, (“Homeowners”).

WHEREAS, Homeowners own property within the City; and

WHEREAS, as part of the Schamber Additional Water Main Extension Project, the City installed a new 1 inch copper water service line between the home and the City water main; and

WHEREAS, it now appears that the water service line was installed in close proximity to an anode bed maintained by Montana Dakota Utilities; and

WHEREAS, in 2011 the Homeowners were forced to replace a portion of this water service line because it had corroded and was leaking; and

WHEREAS, Homeowners have reason to believe that the remainder of the water service line will need to be replaced; and

WHEREAS, Homeowners believe that the damage to the water service line is the result of its close proximity to the MDU anode bed; and

WHEREAS, City believes that this damage to Homeowners’ water service line is due in no way to the conduct of Homeowners or the City; and

WHEREAS, to date Montana Dakota Utilities has not compensated Homeowners for the damage to their water service line; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW, THEREFORE, the parties agree as follows:

1. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. The City agrees to reimburse Homeowners for the costs they sustained in 2011 to replace a portion of their water service line in the amount of \$3,316.02. The parties agree that Homeowners will receive these payments within 45 days of the execution of this Agreement.

3. The parties agree that Homeowners or their designee will replace the remainder of the water service line not replaced in 2011 (“Work”) and that the City will not perform this Work. Homeowners agree that they or their designee will perform the Work in accordance with City specifications. Once the Work is complete, Homeowners agree to submit to City an

itemized bill for the Work. If the itemized bill seeks payment of less than \$6,700, City agrees to pay Homeowners or their designee the entire cost included in the itemized bill within 45 days of receipt of the itemized bill. If the itemized bill seeks payment of more than \$6,700, the City agrees to pay Homeowners or their designee a total of \$6,700 within 45 days of receipt of the itemized bill. Homeowners may request the City review and approve any additional payment equal to the cost of the Work that exceeds \$6,700, and the City may determine at that time whether such additional payment will be made. The parties agree that City has no obligation to approve any additional payment in excess of \$6,700.

Homeowners agree that they or their designee will obtain all necessary permits and inspections required by City ordinance for installation of the water service line and/or for City utility maintenance. If Homeowners or their designee desire that the service line be of another material than City specifications allow, they agree to submit a request for an exception to City to permit use of an alternative material.

The parties agree that this Work will be completed within one year of the execution of this Agreement. If Homeowners or their designee fail to complete the Work within one year of this Agreement, the parties agree that City will not pay for the cost of the Work and that City has no further obligations to Homeowners to pay for the cost of the Work.

4. In exchange for City's entry into this Agreement, Homeowners shall release, defend, indemnify, and hold harmless the City from any and all current and potential claims, demands, damages, actions, and causes of action, costs, expenses, compensation, and/or claims that they may now have or hereafter have, whether known or unknown, arising in any way out of, or in any way related to the subject of this Agreement.

5. Homeowners agree that City may seek reimbursement for any of its expenses and costs under this Agreement from Montana Dakota Utilities, and Homeowners further agree to cooperate with City in seeking such reimbursement. In the event that Montana Dakota Utilities or any other entity compensates Homeowners for damage that City has repaired or costs that City has paid as a result of this Agreement, Homeowners agree to reimburse City in the same amount they received as compensation. The parties agree that Homeowners will not directly seek or request payment or compensation from Montana Dakota Utilities for their costs and damages discussed in this Agreement.

6. The parties acknowledge that this Agreement constitutes the settlement of claims disputed by the parties and is not an admission of any liability on the part of any party.

7. Homeowners warrant that they have had the opportunity to discuss the terms, conditions and consequences of this Agreement with an attorney and that they completely understand and voluntarily accept all of the terms and conditions herein contained.

8. This Agreement constitutes the entire agreement of the parties, and it supersedes all prior negotiations, agreements and understandings, whether oral or written.

9. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

10. This Agreement may only be amended by a written document duly executed by all parties.

11. If any section(s), or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this Agreement if they can be given effect without the invalid section(s) or provisions.

12. The parties' rights and obligations under this Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any dispute concerning this Agreement shall only be litigated in the Seventh Judicial Circuit for the State of South Dakota located in Rapid City, Pennington County, South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF RAPID CITY

\_\_\_\_\_  
Sam Kooiker, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)

State of South Dakota            )  
  SS.  
County of Pennington            )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:  
(SEAL)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Don Bunker

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(seal)

\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Jodie Bunker

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(seal)

\_\_\_\_\_  
Notary Public – South Dakota  
My Commission Expires \_\_\_\_\_